

**Allowable Subject Matter**

Applicants respectfully thank the Examiner for the indication that the subject matter of pending claims 42, 43, 45-53, 55-89, 91, 93-95, and 97-101 is allowable over the prior art of record.

**Rejection of Claims 44, 90, 92 and 96 Under 35 USC §103**

Claims 44, 90, 92 and 96 have been rejected under 35 USC § 103(a) as being unpatentable over Kline et al (*J. Invest. Med.* 44(7) 380A, 1996). The declaration submitted on November 30, 2001 incorrectly named the co-authors of the above reference. This mistake was unintentional. A new declaration with the correct authorship of the reference is submitted herewith.

A rejection in view of prior art may be overcome when the applicant is an author on the prior art publication and can assert that he is the sole inventor and that the other co-authors were working under the direction of the applicant. It is sufficient to present an affidavit or declaration by the applicant alone to demonstrate these facts, in order to remove the publication as a reference under 35 USC § 102(a). (MPEP § 715.01(c), citing *In re Katz*, 687 F2d 450, 215 USPQ 14(CCPA 1982).

Applicants submit herewith a Declaration of Dr. Joel Kline and Dr. Arthur Krieg under 37 CFR § 1.132. In the Declaration, Drs. Kline and Krieg establish that the Kline et al. reference (*J. Invest. Med.* 44(7): 380A, 1996) describes Drs. Kline's and Krieg's own work which led to this invention. Drs. Kline and Krieg have indicated in the attached Declaration that they are the sole inventors and that the remaining co-authors were merely working under their direction or supplied materials that were used in the experiments. The work described in the publication is their own invention.

**SUMMARY**

In view of the forgoing amendments and remarks, Applicants respectfully request that the Examiner withdraw the rejection. This application should now be in condition for allowance. A Notice to the effect is respectfully requested. If the Examiner believes after this

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amendment that the application is not in condition for allowance, the Examiner is requested to call the Applicants' attorney at the number listed below.

Respectfully submitted,



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Docket No. C01039/70020  
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